



POLICE DEPARTMENT

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2021-23192
Sergeant Edward Mullins	:	2021-23193
Tax Registry No. 876768	:	
Detective Borough Brooklyn South Operations	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Johnathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Hugo Ortega, Esq.
Tanner & Ortega, L.L.P.
299 Broadway, Ste. 1700
New York, NY 10007

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2021-23192

1. Sergeant Edward Mullins, on or about May 13, 2020, at approximately 2036 hours, while assigned to DBBS OP and on-duty, made disrespectful remarks regarding the gender of Oxiris Barbot, in that he published a tweet calling Oxiris Barbot a "bitch."
P.G. 203-10, Page 1, Paragraph 1
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT –
PROHIBITED CONDUCT
PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2021-23193

1. Sergeant Edward Mullins, on or about September 4, 2020, at approximately 1200 hours, while assigned to DBBS OP and on-duty, made disrespectful remarks regarding the perceived sexual orientation of Ritchie Torres, in that Sergeant Mullins published a tweet calling Ritchie Torres a "first class whore."
P.G. 203-10, Page 1, Paragraph 1
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT –
PROHIBITED CONDUCT
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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 25, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called CCRB Investigator Owen Godshall, and Respondent, as witnesses. Respondent elected not to call any witnesses. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, and recommend that Respondent forfeit a total of forty (40) vacation days.

ANALYSIS

These cases involve two tweets that Respondent posted on the public Twitter account of the Sergeants Benevolent Association (“SBA”):

1. On May 13, 2020, Respondent posted a link to a newspaper article reporting that Dr. Oxiris Barbot, then-New York City Health Commissioner, had denied the urgent request of a high-ranking police official for 500,000 surgical masks. Barbot reportedly told the police official, “I don’t give two rats’ asses about your cops.” In response, Respondent tweeted, “Truth is this bitch has blood on her hands but why should anyone be surprised the NYPD has suffered under DeBlasio since he became Mayor.” (CCRB Ex. 1A)
2. On September 4, 2020, Respondent posted a tweet regarding then-Congressional candidate Ritchie Torres, who reportedly had called for an investigation into what he described as a “slowdown” in law enforcement activity, which in turn led to a spike in gun violence. In response, Respondent tweeted, “He[re] we go America this is what a first class whore looks like RITCHIE TORRES. Passes laws to defund police, supports criminals, & now because he’s running for office he blames the police to protect what he voted for. Remember little Ritchie? Meet LYING RITCHIE @RitchieTorres.” (CCRB Ex. 1B)

It is undisputed that Respondent, who at the time was the President of the SBA, did, in fact, post these tweets on the SBA’s public twitter account. At issue is whether Respondent’s use of the words “bitch” and “whore” to describe Barbot and Torres constitutes misconduct. I find that it does.

CCRB Investigator Owen Godshall testified that he recently reviewed the SBA's Twitter account, which is separate from the official NYPD Twitter account, and determined that it has approximately 45,000 followers, including multiple local and national news media outlets. At the time of the two tweets at issue, Respondent was an active member of the Department. With respect to the tweet of May 13, 2020, Respondent used the word "bitch" to describe Barbot, who at the time was the City's Health Commissioner. In the tweet dated September 4, 2020, Respondent used the phrase "first-class whore" to describe Torres, a candidate for Congress who openly identifies as an LGBTQ individual. According to Godshall, both tweets received extensive press coverage, locally and nationally, in newspapers and on video broadcasts including an interview of Respondent on Fox News on May 15, 2020. Godshall also testified that from his investigation, he was aware that Barbot later apologized for what she had said to the high-ranking Department official who had requested masks for Department personnel. (Tr. 22-29, 40-42, 44, 51-52)

Respondent, who was elected President of the SBA in 2002, testified that his tweets were not intended to target the gender or sexual orientation of either Barbot or Torres. He insisted that he did not do anything improper by speaking out on behalf of his members, who were being put "in harm's way" by Barbot and Torres. Specifically, Barbot was depriving police officers of much needed protective masks during the pandemic, while Torres, who at the time was a councilman running for Congress, wrongfully blamed the NYPD for a spike in shootings, thereby "using the men and women of the NYPD to help get himself elected." Respondent maintained that he made no apologies for the two tweets he posted; he claimed that under the circumstances, it would have been "irresponsible" of him *not* to say anything, and that he wanted to draw national attention to the issues. (Tr. 57-61, 64-70)

Respondent confirmed that he was a Department employee when he posted the tweets, drawing a salary, and accruing time toward his pension. He testified that based on Executive Order 75, he believed that he was on the payroll of the NYPD, but released from police duties while serving as the head of the union. (Tr. 62-65)

A copy of Executive Order 75 was admitted into evidence (Resp. Ex. A). That order excuses public employees who head unions from their regular assignments in order to focus on union activity. In paragraph 10 of section 4, the order also states that employees “shall at all times conduct themselves in a responsible manner.” *See also Matter of Patrolmen’s Benevolent Ass’n of the City of N.Y., Inc. v. City of N.Y.*, 119 A.D.3d 1 (1st Dept. 2014), rev’d as moot, 26 N.Y.3d 1044 (2015), where the Court noted that Executive Order 75 vests the City with “broad oversight of employee representatives,” and that there are “consequences for non-compliance” with the requirement to behave in a responsible manner.

Disciplinary Case No. 2021-23192 charges that Respondent committed misconduct in that he tweeted disrespectful remarks regarding the gender of Barbot, referring to her as a “bitch.” In *Disciplinary Case No. 2021-23193*, it is alleged that Respondent committed misconduct by making disrespectful remarks regarding the perceived sexual orientation of Torres, in that Respondent tweeted that Torres was a “first class whore.” Section 203-10(1) of the Patrol Guide prohibits making “discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.” Paragraph 5 of that section prohibits “engaging in conduct prejudicial to [the] good order, efficiency, or discipline of the Department.”

Both sides are in essential agreement that there needs to be a balancing analysis here: the interests of the employee, acting in his capacity as union president, in commenting upon matters

of public concern must be weighed against the interest of the Department, as an employer, in promoting the efficient and orderly operation of the Department. See *Pickering v. Bd. of Educ.*, 391 US 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983). The parties disagree, however, as to the conclusions to be drawn from such a balancing.

Counsel for Respondent does not dispute that Respondent posted the tweets in question, but argues that on balance, they do not constitute misconduct. He contends that his client should “face only those speech restrictions that are necessary for [the Department] to operate efficiently and effectively,” which includes “avoiding having the judgment and professionalism of the agency brought into serious disrepute.” (Tr. 77) According to his Counsel, Respondent, as the president of a union, was well within his rights to post such tweets, and that the tweets constituted protected free speech aimed at defending his members. Meanwhile, the CCRB counters that Respondent, as an employee of the Department, does not get carte blanche to use slurs such as these, and that Respondent’s interest in doing so is outweighed by the municipality’s need to maintain the good order and efficient operation of the Department. It is the position of the CCRB that the Department is not required “to sit idly by” while one of its employees uses biased language against those who the Department is bound to serve and protect, even if he is the president of a union. (Tr. 91)

On the one hand, Respondent, as president of the SBA, had a legitimate interest in speaking out on behalf of his constituents. In his testimony, Respondent came across as genuine as he explained that he posted the tweets in defense of the members he represents. Specifically, in the midst of the pandemic, Respondent was concerned that the members of the Department were being put in harm’s way by depriving them of necessary protective masks, and were being falsely blamed for the spike in violent crime. Respondent, as head of the union, felt it was his

responsibility to make statements on behalf of his members, leading to the two tweets in question.

However, even though the tweets were an attempt at zealous advocacy, as Respondent was seeking to draw attention to the perceived unjust treatment of his members, that does not excuse the derogatory and demeaning words he used as part of that advocacy. In an effort to make headlines, Respondent used slurs to describe Barbot and Torres, referring to Barbot, a female, as a “bitch,” and Torres, who openly identifies as an LGBTQ individual, as a “first-class whore.” The use of such language undermines public confidence in the NYPD, thereby compromising the ability of the Department to serve the community effectively. The slurs included in these public tweets have a profound impact, bringing discredit both to Respondent himself and the Department as a whole.

Even though the tweets were made in Respondent’s capacity as the president of the union, as an employee of the Department he remains accountable for his actions, both on-duty and off-duty. Indeed, Executive Order 75, on which Respondent relies, cautions that employees of the Department “shall at all times conduct themselves in a responsible manner.” Making tweets where he referred to one female public figure as a “bitch,” and another public figure who openly identifies as an LGBTQ individual as a “first-class whore,” was anything but responsible.

To be sure, Respondent was well within his rights to speak out on behalf of his members, and he is not being subjected to discipline merely because he voiced his concerns. In the midst of the pandemic, Barbot told a high-ranking police official, who was attempting to secure protective masks, “I don’t give two rats’ asses about your cops,” a statement which was an affront to the members of this Department, and for which Barbot, herself, later apologized. It is, rather, the slurs he chose to include in his criticism that constitute misconduct. The words

Respondent chose words degrading, and against the good order, efficiency, and discipline of the Department, in violation of Section 203-10 of the Patrol Guide. Accordingly, I find Respondent guilty of both specifications.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 25, 1982, has been found guilty of publishing two disrespectful tweets on the SBA twitter account, in violation of the Patrol Guide. The CCRB recommends that Respondent be terminated from the Department, in light of the broad reach and ramifications of the tweets. Under the specific circumstances of these cases, the Tribunal disagrees with that recommendation.

As discussed above, Respondent is not being disciplined for representing the interests of his members, or for strenuously objecting to comments made by public officials; rather, it is the slurs he chose to include in his criticism that is contrary to the good order and efficiency of the Department. Indeed, it is important to keep in mind that at the time he published the two tweets, the City was grappling with a pandemic, a challenging time of unrelenting exhaustion, anxiety, fear, and tension. It was in this context that Respondent, who has served nearly four decades with the Department, showed poor judgment by using slurs to disparage two public figures as part of his messaging, contrary to the Patrol Guide.

However, counsel for the CCRB is correct that more is expected from someone with Respondent's experience. His biased, offensive tweets, published on a public Twitter account with approximately 45,000 followers, and picked up by the news media locally and nationally, reflected poorly on the Department that employs him. By resorting to using slurs instead of sticking to the issues at hand, Respondent brought discredit to the Department's membership. In doing so, Respondent ran afoul of longstanding Department guidelines, and there must be appropriate accountability.

Foul language by a Member of the Service is ordinarily considered "Discourtesy" under the Disciplinary Guidelines, which carries a presumptive penalty of five (5) penalty days. However, I agree with the CCRB that in cases such as this, where the language used is more serious, such as when it "includes slurs based on membership in a protected class such as race, religion, ethnicity, gender, gender identity, sexual orientation, age, or disability," then the misconduct is classified as "Offensive Language," which carries a higher penalty. According to the Disciplinary Guidelines, the presumptive penalty for Offensive Language is 20 penalty days; the aggravated penalty calls for termination.

On balance, I find that the presumptive penalty for "Offensive Language" is warranted here, despite the broad reach of Respondent's offending tweets, and that a forfeiture of 20 vacation days is appropriate for each of the tweets. Since the two tweets constituted separate, distinct acts of misconduct by Respondent, consecutive penalties should be imposed, totaling 40 penalty days. The forfeiture of 40 penalty days will fairly and adequately address Respondent's misconduct here. Therefore, taking into account the totality of the facts and circumstances in

these matters, I recommend that Respondent forfeit twenty (20) vacation days for each of the two cases, for a total of forty (40) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



NOV 04 2021
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
SERGEANT EDWARD MULLINS
TAX REGISTRY NO. 876768
DISCIPLINARY CASE NOS. 2021-23192 & 2021-23193

Respondent was appointed to the Department on January 25, 1982. On his three most recent annual performance evaluations, he received 4.5 overall ratings of “Extremely Competent/Highly Competent” for 2017, 2018 and 2019. He has been awarded two medals for Meritorious Police Duty and three medals for Excellent Police Duty.

In 1987, Respondent forfeited 25 vacation days involving an off-duty incident where he punched an individual in the face and threw a bottle, striking a second individual.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials